In the

United States Circuit Court of Appeals

For the Ninth Circuit

NO. 8364

NG FOOK, Appellant,

vs.

MARIE A. PROCTOR, United States Commissioner of Immigration at the Port of Seattle, Appellee

Brief of Appellant

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STATEMENT OF FACTS

This matter comes before the court upon an appeal from an order of the district court denying the appellant's application for a writ of habeas corpus.

The grandfather of the appellant, whose name is Ng Fun, was born in the Hawaiian Islands on August 12th, 1885. This fact was attested by a signed and sealed certificate made by the proper officers in the Hawaiian Islands, to the effect that the said Ng Fun was there born.

Subsequently, and prior to 1902, the said Ng Fun left the Hawaiian Islands and went to China, where, in the year 1902 there was born to him a son, the father of appellant, Ng Ming Yin. This is conceded by the government and he has made frequent and periodic trips from the United States to China and has returned without any question and has always been issued return certificate No. 430. The appellant, Ng Fook, is the son of Ng Ming Yin.

The records and files of the Immigration Service of the Department of Labor contain a copy of the pre-investigation of Ng Fun, the grandfather of the present applicant, San Francisco File No. 10082/3, which was made at the time of the application to enter the United States in 1905. The record from Honolulu incorporates as an exhibit in the case a duly certified and authenticated copy of birth certificate No. 837, dated September 4, 1901, executed by the Secretary of the Territory of Hawaii, which certifies that the grandfather was born in the Hawaiian Islands August 13, 1885. Letter of the Central Office No. 54388/206 of February 16, 1918, states that the evidence in the record reasonably establishes that NG MING YIN is the son of a native-born citizen.

The two primary questions presented to this court upon appeal can be summarized as follows:

1. The question of law presented as to whether or not Ng Ming Yin, born in 1902 in China, took the United States citizenship of his father, who was born in the Hawaiian Islands.

The government has contended that he did not take the citizenship of his father by reason of the fact that at the time of his birth the English common law rule applied, to the effect that a child born abroad of a father who was the subject of England would not take the nationality of his father.

Thus, the whole controversy as to the question of law turns upon this problem as to whether or not the common law rule is applicable to this case, so that NG FOOK could not have taken the citizenship of his father. It is contended by appellant, as more specifically appears in this brief, that the English common law rule does not apply in the case at bar.

2. Whether the Board of Special Inquiry was justified in basing its order of exclusion upon minor and trivial discrepancies in the record and relating only to collateral matters and not to the real issue of relationship, when all of the other testimony and records of the department in the case show a consistent agreement upon the facts having a bearing upon the relationship of the appellant to his father. The decision of the Board of Review which upheld the

Board of Special Inquiry, which is designated on the record as 55917/473, paragraph four of which reads as follows

> "As to the relationship, the alleged father claimed in April, 1921 to have as his oldest child such a son as this applicant. The alleged father who as noted above was last in China in 1931 has appeared to testify as the only witness on the applicant's behalf. The present testimony of the applicant and alleged father, while *showing considerable agreement*, disclosed several discrepancies for which no reasonable explanation consistent with the relationship here claimed has been suggested."

This particular extract from the decision of the Board of Review emphasizes the fact that the government from the beginning regarded the question raised by the appellant upon his application to enter the country, as purely one of law, and the Board of Inquiry regarded it as purely one of law; and it was not until the Board of Review, in its decision above quoted, upheld the Seattle office that the appellant was not entitled to enter the country, as a matter of law upon the admitted facts that the government then abandoned the position that the appellant should be barred as a matter of law and sought to make a case upon a question of fact, that is to say, they went through the records and seized upon minor and trivial discrepancies having no logical bearing to whether or not the appellant was the son of his fath-

er and proceeded to take the position that he was not, and from this time on have sought to bolster up the weakness of their case upon the question of law by this later acquired emphasis upon the question of fact.

It should be here pointed out that the only discrepancies which the government was able to disclose in the record were collateral matters and can be summarized as follows:

1. That the father smoked a pipe—the appellant said that he never smoked a pipe.

2. The appellant described the exact amount of space between the houses in the village a little differently than that of his father.

3. The appellant said that there is one photograph of his parents in the house and the father says that there is only a photograph of himself in the house.

ASSIGNMENTS OF ERROR

1. The Court erred in discharging the order of show cause herein.

2. The Court erred in finding that the petitioner was not a citizen of the United States and that he was not entitled to enter the United States as a citizen.

3. The Court erred in refusing to allow applicant a fair and impartial hearing.

4. The Court erred in discharging the order to show cause and denying petitioner's petition for a writ of habeas corpus.

ARGUMENT

For the convenience of argument, the principal issues raised in this case will be discussed separately, that is, question of fact as to applicant's relationship with father and, secondly, the question of law as to whether the appellant's father, who was born in China, took the citizenship of applicant's grandfather, who was born in the Hawaiian Islands.

Contentions of appellant can be separately stated.

1. That the appellant is the son of NG MING YIN.

2. That the father of appellant acquired the United States citizenship of his father (the appellant's grandfather, who was born in Hawaii) and that the father of the appellant acquired the United States citizenship of his father (the appellant's grandfather).

At the time this matter was heard before the Board of Special Inquiry of Seattle, it was impliedly conceded that the only question was one of law as

to whether or not NG MING YIN, who was born in China in 1902, took the United States citizenship of his father, NG FUN, who was born in Hawaii. The government then concluded, as it does now, that NG MING YIN did not take the citizenship of his father, by reason of the fact that at the time of his birth the English common law rule was that a child born abroad of a father who was the subject of England, did not take the nationality of his father. At the time of the hearing before the Board of Special Inquiry at Seattle, relied upon this contention. However, as events developed, and it became apparent to the government that their position of law was not as well taken as had been anticipated at first blush, the government immediately scrambled about to raise the question of fact, which had never occurred to them until they discovered their weakness upon the question of law. This undoubtedly accounts for the weakness of the government's case upon the alleged discrepancies and upon the question of fact of the appellant's relationship to his father, which will be discussed in the latter part of the argument.

The basis of the government's contention that the English common law applies, said rule being to the effect that a child born of a citizen in a foreign country does not take ctizenship of his father, is based solely upon Title 1, Chapter 1, Section 1, of the

Revised Laws of Hawaii, 1925 compilation, which were originally enacted in 1892. The particular provision upon which the government relies is as follows:

> "The common law of England, as ascertained by English and American decisions, is declared to be the common law of the Hawaiian Islands in all cases, * * *"

Now, it has been contended by the government that this was the complete wording of the statute at the time of the birth of the father of the applicant in 1902. The applicant contends, however, that the government has omitted an essential part from this statute, which was in effect at the time of the birth of the father of the applicant, which reads as follows:

> "* * * except as otherwise expressly provided by the Constitution and laws of the United States or by the laws of the Territory, or fixed by Hawaiian judicial procedure or establishment by Hawaiian usage; provided, however, that no person shall be subjected to criminal proceedings except as provided by the written laws of the United States or of said Territory."

It is the contention of the applicant herein that this latter provision was a part of the law in 1902, when the father of the applicant was born, although the compilation of the code from the original session laws, which are not available to the applicant, leaves some doubt as to the actual date when this latter part

was either added to or became concurrently a part of the above provision.

In any event, it is contended by the applicant that this is immaterial, due to the fact that under the annexation act which made the Territory of Hawaii a territory of the United States and set up the territorial government, the laws and Constitution of the United States automatically became a part of the organic law of the government of Hawaii, and therefore became a part of the Constitution of said government concurrently with the extension of the sovereignity of the United States over the Territory of Hawaii. Sectioon 5 of said Act provided:

> "That the Constitution, and, except as other wise provided, all the laws of the United States, including laws carrying out general appropriations, which are not locally inapplicable, shall have the same force and effect within the territory as elsewhere in the United States; provided, that Sections 1841 to 1891, inclusive, 1910 and 1912, of the Revised Statutes, and the amendments thereto, and an act entitled 'An act to prevent the passage of local or special laws in the territories of the United States, to limit territorial indebtedness, and for other purposes,' approved July 13, 1886, shall not apply to Hawaii."

It is apparent that the laws of the United States with respect to citizenship in 1900 automatically became a part of the laws of Hawaii and that there has

been effective for many years an act with regard to children born to citizens without the United States, which was passed in 1802, with certain amendments in 1885. The statute as it existed from 1885 until 1907 will be found to be identical with the first sentence of 8 U. S. Code Annotated, Section 6; that is to say, that the latter sentences were added at or subsequent to 1907. The first sentence reads as follows:

> "Children of Citizens Born Outside the United States. All children born out of the limits and jurisdiction of the United States, whose fathers may be at the time of their birth citizens of the United States, are declared to be citizens of the United States; but the right of citizenship shall not descend to children whose fathers never resided in the United States * * *"

Therefore, there can be no dispute about the fact that in 1902, the date of the birth of the father of the applicant, that under the laws of the Territory of Hawaii the father of the applicant automatically became a citizen of the United States, by reason of the fact that he was born the son of a citizen of the United States, regardless and irrespective of the fact that he was born in China.

Of course, the fundamental premise to all of the foregoing is that a person born and naturalized in the Hawaiian Islands automatically becomes a citizen of

the United States. Article 17, Sec 1 of Constitution of the Republic of Hawaii adopted in 1894 provides:

> "All persons born in the Hawaiian Islands and subject to the jurisdiction of the Republic are citizens thereof;
>
> And further, all citizens of the Republic of of Hawaii under the annexation act of 1900, making the Hawaiian Islands, a territory of the United States, automatically become citizens of the U. S.

Section 4 thereof provides:

> "All persons who were citizens of the republic of Hawaii on August twelfth, eighteen hundred and ninety-eight, are hereby declared to be citizens of the United States and citizens of the Territory of Hawaii."

The fact that the common law rule was not applicable at the time of the birth of the father of applicant, is evident upon a reading of a decision in 1902 by the Hawaiian Supreme Court:

> *U. S. of America vs. Ching Tai Sai*, 1 Hawaiian Reports 118.

In this particular case, two Chinese boys were born in the Hawaiian Islands at the time it was a kingdom, and it was admitted by them that they were born of a domiciled Chinese laborer. The Court here held that, irrespective of this, that they automatically became citizens of the Territory of Hawaii and

therefore citizens of the United States, by virtue of Article 17, Section 1, of the Constitution of the Republic of Hawaii, the Republic having been established immediately prior to the territorial government.

> "* * * that all persons born or naturalized in the Hawaiian Islands, and subject to the jurisdiction of the Republic, are citizens thereof."

Quoting from the case:

> "In the Act of April 30, 1900 (Volume 31 U. S. Statutes, page 41), entitled 'An Act to provide a government for the Territory of Hawaii,' is prescribed by Section 4 thereof relating to the question of American citizenship of people of the Islands: 'That all persons who were citizens of the Republic of Hawaii on August twelfth, eighteen hundred and ninety-eight are hereby declared to be citizens of the Territory of Hawaii.' "

The Court further says:

> "Upon an examination of the Constitution of the Kingdom of Hawaii and the laws of same, I find nothing at the time of the birth of either of these boys defining the status of aliens domiciled within the Hawaiian Islands which would tend to throw any light upon the status of these defendants, *and the rules of international law will prevail in the absence of any special enactment in relation thereto, and the citizenship of the children follow that of the father, in this case a subject of China* (underling ours) were it not for the fact that the Constitution of the Hawaiian Islands provided in terms, that all persons born or naturalized in the Hawaiian Islands and subject to the jurisdiction thereof are citizens of the Republic.' "

In other words, the Supreme Court of the Territory of Hawaii said that under the rules of law in the Territory of Hawaii with respect to the citizenship of children born of a father who was not a citizen of the Territory of Hawaii, that the English common law did not apply and the children did take the citizenship of their father, were it not for the constitutional provision which has already been referred to. This case indicates that even prior to the organic act, that according to Hawaiian usage and precedent, in matters of citizenship the English common law rule was not recognized. This is clear from the above opinion, when the court said:

> "* * * and the rules of international law will prevail in the absence of any special enactment in relation thereof, and the citizenship of the children follow that of the father * * *"

The government has heretofore relied on a decision of the Circuit Court of Appeals for the Ninth Circuit, in the case of

> *Wong Fong vs. U. S.*, 69 Fed. (2d) 681 (1934).

In this particular case the petitioner relied upon Section 4 of the Act of 1900. The petitioner was born in 1894 in China, which, of course, was prior to the Annexation Act of 1900, which in any event incorporated the laws and statutes of the United States with respect to citizenship. Petitioner in that case was

born the son of a citizen of the United States, who became a citizen by virtue of the fact that all citizens of the Republic of Hawaii were made citizens of the United States at the time of the annexation of Hawaii, but was unfortunate in not being born subsequent to 1900. Had he been, he would have become a citizen of the United States, for the reason that at the time the statutes with reference to citizenship of persons born abroad of citizens of the United States provided that they automatically became citizens of the United States.

The applicant here, however, is more fortunate in that his father was born in 1902, of a citizen of the United States, and in this connection it should be further pointed out that the father has on numerous and repeated occasions returned to the United States, so as to bring him within the provisions of the statute (8 U. S. Code Annotated, 6) to the effect that the rights of citizenship shall not descend to children whose fathers have never resided in the United States.

In the case of

Hawaii vs. Mankichi, 190 U. S. 197.

the defendant was convicted of a crime before the date of the Annexation Act of 1900, but after the date of the territorial resolution of 1898, which de-

clared that the Republic of Hawaii was to be a territory of the United States. The defendant contended that in 1898 the Constitution and laws of the United States extended over the Territory of Hawaii, and that his conviction was not in conformity therewith. The Court however, decided that so far as he was concerned, the laws and Constitution of the United States extended over the Territory of Hawaii only at the time of the Annexation Act of 1900.

> "The laws of the United States shall have the same force and effect within said territory as elsewhere in the United States."

Thus, the Supreme Court of the United States has recognized the fact that in 1900, by virtue of the annexation act of that date, that the laws and Constitution of the United States, so far as they were not locally inapplicable, became the law of the Territory of Hawaii. It would follow that the laws with respect to citizenship in effect at that time automatically in 1900 became the laws of Hawaii with respect to citizenship.

THE RECORD SHOWS APPELLANT IS SON OF NG MING YIN

It was agreed in this case by the Board of Special Inquiry at Seattle that the question of discrepancies of fact were eliminated, and that one of the cleanest

cut questions of law that we would ever get in any case was presented. In other words, because of the personal contact, family resemblance, and the excellency of the record, there was no need for comment upon the facts. The Board of Special Inquiry urged the question of law in its memorandum, and still insists that the Board of Review has made a mistake in its ruling upon the law. The applicant presented his case to the Board of Review, and the Board of Review sustained the appeal, so far as the question of law was concerned, and then turned around and tried to make something out of nothing with regard to discrepancies which those who are in contact with the case realize is not the question here presented, which is strictly a question of law and not of fact. The Board of Review goes so far as to drag into the record three persons who had nothing to do with the record, in order to sustain their decision.

It may be that the Board of Review are wrong on their decision in the law, but everyone in personal contact with the case knows that they are wrong upon their decision upon the facts. There is no doubt in anybody's mind that has this information first hand, that the applicant is the son of the father. That really calls for no discussion. But there is, however, a very interesting question of law in the case, as to whether the father is a citizen, and, of course, if he

is not a citizen then the son is not a citizen either, but if the father is a citizen then the son is a citizen; and that depends entirely upon the statutes of the Territory of Hawaii, and it is upon the determination of the effect of those statutes which fully decides this question.

I am compelled, in view of the ruling of the Board of Review, which has shocked everyone connected with the case, to take up the questions of fact. Because of the mutual feeling in the matter of both sides of the case, eliminating the Board of Review, believing the facts as our senses have conveyed the information to us upon which we have made our decision, it is indeed difficult for either side, knowing full well the facts, to argue something that we do not believe belongs in it, but which has been injected into it by the unusual decision of the Board of Review.

It can scarcely be believed that anyone could read the record without coming to the definite conclusion that the applicant is the son and the father his father. There is no question of the relationship between the father and the son, and their testimony with regard to all the immediate members of the family, the home village, its peculiar surroundings, nearby village and market places, their own home—its location and exterior and interior, the school attended by

the applicant and its location, and the various inhabitants of the village, agree in every substantial respect. Very convincing testimony is given with regard to the presence in the home of a white dog, and the source from which that dog was obtained about five or six years ago; and with regard to other village animals there is similar agreement. The testimony is by no means stereotyped and it carries with it the ring of truth.

No one who had read the record with an unbiased mind could have denied the applicant his constitutional birthright of citizenship and deprived him of his liberty and incarcerated him in a detention station, because it was in their minds that he was not the son of the father and because the relationship did not exist; the only reason was because the law upon which the father relied for his citizenship did not give him that citizenship, and he was not by reason of the law a citizen of the United States, and therefore his son was not a citizen.

Taking up in detail the points raised by the Board of Review, the following may be said:

A. *Father's smoking while last in China.* Pp 2, 8, 15.

No reason can be imagined why the father should untruthfully claim that he is not addicted to the habit

of smoking. The boy, who was nine or ten years old at the time and who was almost constantly in school while his father was home, doubtless had seen his father on several occasions in the company of other men who were smoking Chinese tobacco in Chinese water pipes, and somehow got the impression that his father smoked along with the rest of them.

B. *Spaces between village houses.* Pp. 4. 10, 11 (2), 15.

Referring again to the convincing nature of the testimony of the applicant and his father concerning the village and its occupants and its surroundings, it seems highly probable, if not certain, that this discrepancy came about in the following manner. In the first examination applicant was not questioned at all about spaces between the houses in the different rows, but the matter was taken up this way: "Q. There are a set of blocks on the table before you. You are requested to arrange these blocks to show the location of each building in your village, together with any other items that are necessary." Then, according to the plain wording of the record, the applicant proceeded to do several remarkable things with the blocks, a description of which covers a quarter page close written. In the first place, he arranged the blocks "to show three rows of houses, with a house on each row, no space between the houses on each

row." Clearly this part of the record is erroneous. Judging from testimony given by the father and later given by the applicant, applicant's arrangement of the blocks must have shown three houses in each row, each block set tightly against the other, and thus representing "no space" between the houses. Then, according to the record, the applicant proceeded to show with the blocks, not only everything in the village but everything anywhere near the village., even showing the location of Sin Chung City eight or nine lis away. Of course the record is absolutely erroneous in this respect also; and probably what happened was that, after the applicant had laid out the village, the interpreter asked him a lot of questions and then the result of the use of the blocks and of the answers to these informal questions was incorporated in the record as though the blocks showed the whole thing.

The father's use of blocks (p. 10) indicated that there were spaces between the houses, and his testimony was to the effect that the houses were built about four feet apart. When the boy was reexamined on the proposition, he doubtless remembered the way he had arranged the blocks, firmly up against each other, and felt that he was committed to the proposition that there were no spaces, through the manner in which he had made use of the (to him) alto-

gether novel method of trying to tell about something.

C. *Photograph of Mother in house*, Pp. 5, 13, 15.

The unfairness of concluding that a material discrepancy exists with respect to this matter may best be illustrated by quoting testimony. Applicant: "Q. Did you ever see any photograph or pictures of any person kept on the walls of your home? A. Yes, there is one photograph of each of my parents in the sitting room framed about this size (indicated about 18-in by 12-in.). Q. Do you know when these photographs were made? A. Over 10 years ago, as I remember it; it was quite a while ago. Q. Was there ever a group photograph taken showing either of your parents with any of your brothers or yourself? A. No."

The father: "Q. Was there any photographs or pictures of any person kept on the wall of your house? A. Yes, I have a photograph of myself hanging in the house. Q. Was there ever a photograph of your wife kept in your house? A. No. Q. How large is this photograph of yourself? A. About this size (indicates 18-in by 24-in.). Q. You don't think that there ever was a photograph of your wife kept in house? A. No. Q. Were you ever photographed in company with any of your children? A. No."

Applicant: "Q. Was there a photograph of your mother kept in your house? A. No. Q. You told us

before there was a photograph of your parents kept in the sitting room of your house. A. Yes, there is a photograph of my mother in the house. Q. How long has that photograph of your mother been there? A. Long time, don't know how long. Q. Is it the same size photograph as that of your father? A. Yes."

It will be observed that when the applicant was asked the direct question as to a photograph of his mother he answered in the negative. But he was immediately told that he already committed himself to the contrary, and it was then he changed. It will be observed also that applicant's first answer, as recorded, might very well be the result of misunderstanding on the part of the interpreter or someone else, for in it he seems to have been talking about one photograph representing two people. It was only when, on his reexamination, he was charged with having asserted previously that a photograph representing both of his parents was hanging in the house, that he talked as though there were two separate photographs, each of the same size, one representing his father and the other representing his mother. Apparently in this connection, as with the preceding proposition, we have an illustration of the fact that applicant is one of those youngsters who thinks that if he once commits himself in a certain way he must

be consistent and remain committed. It is amusing to see how the Board, in reading the record, cannot properly interpret the testimony concerning the sitting room. They call it central room.

4. *Testimony of other persons outside of the record.*

It is of course the fact that in China you are probably born with a million cousins. There are only a few families, and anyone with a Chinese name as Wong, Lee, Fook, etc., is a cousin of his. It is not a relationship any more than all the Smiths and Browns and Joneses are related. But the Board of Review, to justify its decision, has written into the record something that has nothing whatsoever to do with it; that is, the entry of three Chinese into the United States in 1931 and 1932, which is no part of the record and could not be used.

The Board makes the statement that it is agreed that the three alleged cousins are members of applicant's family. There is no such agreement anywhere in the record. It is upon this false premise that they proceed then to state that those alleged cousins are members of the family, and that the testimony that two of them gave in entering this country upon their application should be taken as against the father and the son, whose relationship is so conclu-

sively established, and as against the other alleged cousin, who testified that the father was married. In other words, they go outside of the record to take the testimony of three people who came to the United States in 1931 and 1932, that is not in the record before us, and take the testimony of two of the people as against the third, because the third testified that the father of the present applicant was married. Then they proceed to set these two up against the father and the son, when they were not called as witnesses, either by the government or by the applicant, and there was no way of calling them as witnesses.

How you can take the testimony of someone without bringing him in and giving the person against him the opportunity of cross-examining, or affording some means of interrogation to ascertain what motives he had in stating an untruth about another when entering the country, is more than I can see. I never heard of such procedure and I don't believe anybody else ever did. It would be like the Judge on the bench saying that ten years ago he heard someone say that I was dishonest, and therefore he was going to use that against me as evidence, although no witness was offered in court as to that fact; or that five years ago, out of the whole mass of humanity living in the United States, that three men by the name of Smith arrived in China and stated at the time of their

arrival that I was not married; and because they had so stated in a proceeding strictly applicable to them five years ago that I was not married, it was used now as conclusive evidence of that fact.

There is no relationship between these people that came in 1931 and 1932 and the present applicant, because you cannot say that people who simply have the same family name are related, and that is the only link that connects them. The fact is that in this present record it appears that these people who came here in 1931 had moved away from the One Bing village a long time ago, and the reason why they attempted to testify regarding the One Bing village was because the One Bing village is a village of only nine houses, and these people, having moved into a large city, would have found it much more difficult to describe it, and therefore resorted to the easier way of testifying to the location of the houses and the occupants in the smaller village from which they had so long since moved, and testified as though they had never moved.

The testimony in the present record, however, is all consistent with regard to the houses and their occupants, but not consistent with the testimony in the cases of these people that moved away from the village so long ago, which is clearly disclosed by the record,

but undisclosed by the applicants, which caused the principal variation, and as a result of that variation the others naturally followed.

You will readily understand that we have nothing to do with these people that arrived in 1931 and 1932. We had no opportunity to examine them or cross-examine them. We do not know where they are or how to locate them, and they are in no way identified with us, and how the Board of Review can say that they know that the testimony given by these people in 1931 and 1932 is the truth, the whole truth and nothing but the truth, and that the testimony given in the present case is not the truth, is more than I can see. It is a virtual denial of the rights of the applicant and the testimony given by the said witnesses is outside of the record and cannot be fairly used as a part of this record.

The facts of the case bearing upon the question of relationship are established in so many minute details that the effect of the discrepancies above discussed is overwhelmed; and the evidence preponderates most distinctly in applicant's favor.

The very recent case of *Song Gook Chun vs. Marie A. Proctor*, decided by this court July 20, 1936, being cause No. 8098, is very similar to the case at bar upon the question of fact.

As has already been pointed out, the alleged discrepancies in the case at bar can be boiled down to three: (1) That the father smoked a pipe—the appellant said that his father smoked a pipe, and the father said that he never smoked a pipe. (2) That although the applicant describes correctly that there were nine houses in the village, three in each row, and a social hall in contiguous rows, he describes the exact amount of space between the houses a little different than the father. (3) That the applicant says there is one photograph of each of appellant's parents, and the father says that there is only a photograph of the father.

It has already been pointed out and conclusively establishes the relationship of applicant to his father.

In the *Wong Gook Chun* case, *supra*, there were far more discrepancies than in the case at bar and could be summarized as follows:

1. The question of whether a person by the name of Wong Fon and his family was a village neighbor of the appellant in that case. 2. Certain details as to a village neighbor, King Lai, and his family. 3. Whether the school house was alone by itself or located with the other houses in the village. 4. Certain details as to Hugh Lai and his family. 5. Certain details as to Me Gin and his family. 6.

Certain details as to Foo Lai and his family. 7. Certain details as to appellant's schooling. 8. Certain details as to the girls' house in the village. 9. Certain details as to cross-alleys in the village.

In this case the court refused to give any weight to such minor discrepancies, which had no relation to the issue. It may be here pointed out that the testimony of witnesses was in substantial accord. All things she was able to answer with reasonable accuracy as compared with other witnesses on the same points.

The record shows that all her answers were promptly given. It should be here noted that the Board of Review in the case at bar said:

> "* * * that all the testimony of the applicant of the alleged father, while showing considerable agreement, discloses several discrepancies."

It is important to note that the Board of Review recognized the consistency of the testimony, but merely concluded that, because of the minor discrepancies, it could not believe that the appellant was the son of Ng Ming Yin; and it should be further emphasized that the case at bar should be boiled down to three, as has already been enumerated.

Returning to the *Wong Gook Chun* case above, *supra*, the case continued:

> "As a result of the very searching examination to which each of the witnesses was subjected several discrepancies of a minor nature were brought out. The disagreements in the testimony are mainly on points with reference to the families of neighors and, consequently, unless establishing deliberate falsehood or untruthfulness, are of little significance upon the real point of relationship."
>
> "The father had been absent from his family for many years and he might have honestly been mistaken in this matter. This is not according the applicant a fair hearing, or awarding him justice."

The case at bar is very similar to the case of *Hom Chung vs. Nagle*, 41 Fed. (2) 126. In this case the applicant testified that the schoolhouse had five rooms and a pointed roof, and his father testified that the school house had only one room and a flat roof; the applicant's father testified that the cemetery was west of the village, that the road to the cemetery was wet, and that a single monument and stone covered the graves of his parents and that when at home he slept with his wife and baby; the applicant testified that the cemetery was in a different direction, that the road was dry, and that two monuments and two stones covered the grandparents' graves, and that he and his father slept together. In this case, in regard to such minor discrepancies, the court said:

> "In order to determine the effect of discrepancies between the testimony of the alleged father and his alleged son, it may be fairly assumed that the father is stating the facts concerning the village in which he resided in China as accurately as his memory permits him to do. If he has deliberately and wilfully sworn falsely to secure the admission of appellant into the United States, it is reasonable to assume that such perjury or falsehood is confined to the material fact of the appellant's relationship to him, and does not extend to immaterial details concerning the village in which he lived. Any erroneous statements that he may have made concerning the village or his home therein would have no tendency to discredit his testimony that the appellant was his legitimate son."

The Court further said:

> "If the applicant is from the same home and family, he would, of course, be from the same village, and it is altogether likely that he is the son he claims to be."

In the case of *Ng Yuk Ming vs. Tillinghast*, 28 Fed. (2) 547, C. C. A. 1, the discrepancies were also more serious than in the case at bar. In that case the court said:

> "The discrepancies relied upon by the immigration authorities relate to collateral matters, all of which are of such a trifling nature as to furnish a substantial evidence for reaching a contrary conclusion."

In the case of *Gung You vs. Nagle*, 34 Fed. (2) 848, C. C. A. 9, is a case similar to the case at bar. Quoting:

> "Thus the testimony of five witnesses given on different occasions when the subject was purely incidental to the matter under investigation confirms the ordinary course of nature. To reject this evidence under the circumstances would be equivalent to refusing to hear them at all, and would be a flagrant disregard of the fundamental principles for the administration of justice."
>
> (The five witnesses referred to mentioned the applicant at prior hearings).

The Court also said:

> "Evidence concerning the town or village is adapted to develop the question as to whether or not the applicant lived in the village, and thus in the home from which he claims to come, but discrepancies here must be of the most unsatisfactory kind upon which to base a finding of the credibility of a witness. * * * It would seem that the discrepancy in the testimony of a witness, to justify rejection of testimony, must be on some fact logically related to the matter of relationship and of such a nature that the error or discrepancy cannot reasonably be ascribed to ignorance or forgetfulness, and must reasonably indicate a lack of veracity."

It should be pointed out that in the case at bar the applicant testified in conformity with several other witnesses concerning a multitude of details actually relating to the question of his relationship to his father, and that the insignificant discrepancies heretofore referred to are the only ones upon which the immigration authorities were able to find any minor

differences, in spite of the fact that they cross-examined the applicant at length upon a wide range of questions and details, and matched his testimony against numerous other persons examined at different times.

CONCLUSION

It is respectfully submitted, in view of *Wong Gook Chun vs. Proctor, supra,* and the cases just cited, that the immigration authorities were unjustified in rejecting the testimony of the appellant which fully and clearly established the fact that he was related to the person claimed to be his father; and that the discrepancies were of such a minor and trifling nature and related only to collateral matters and not the real issue of relationship, as to make the action of the immigration authorities in rejecting the testimony establishing the relationship wholly unjustified and, in view of the premises, arbitrary and capricious.

Respectfully submitted,

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